IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2110 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHUPENDRA PANCHABHAI AAHIR

Versus

PV TRIVEDI

Appearance:

MR MIG MANSURI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/05/2000

ORAL JUDGEMENT

1. District Magistrate, Rajkot, passed an order on December 20, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Bhupendra alias Bhupat Panchabhai Aahir of Jetpur, district Rajkot, under the provisions of the said Act.

2. The detaining authority took into consideration

four registered offences and statements of eight anonymous witnesses. The authority exercised powers under Section l9(2) of the PASA Act, by not disclosing identity of these witnesses, after recording a satisfaction that the fear expressed by those witnesses is correct and genuine. The petitioner was branded as a bootlegger.

3. The petitioner-detenu challenges the order of detention on various counts. However, Mr. Mansuri, learned advocate appearing for the petitioner, has relied on the ground of improper exercise of powers under Section 9(2) of the PASA Act in respect of anonymous witnesses. He further submitted that a representation was made on behalf of the detenu to the Government, as contemplated under Section 9 of the PASA Act. The representation was sent through jail authorities. The jail authorities, in turn, sent the same to the Government as well as to the detaining authority, as required under Order 19 of the Gujarat Conditions of Detention (Prevention of Anti-Social Activities) Order, 1985 (hereinafter referred to as "the order"). Mr. Mansuri, however, submitted that the detaining authority has not complied with the requirement of Order 19(2) of the said order, namely, forwarding the representation to the Government expeditiously along with remarks. This has resulted into infringement of right of the detenu of making an affective representation guaranteed under the Constitution. He, therefore, submitted that the continued detention of the detenu is bad in law. Mr. Mansuri submitted further that when the order of detention was passed, the detenu was in judicial custody and no compelling reasons are shown by the detaining authority for passing such order while the detenu was in judicial custody.

3.1 Mr. Mansuri submitted that, as regards the statements of anonymous witnesses, of whom powers under Section 9(2) are exercised by the detaining authority, there is no verification by the detaining authority and, therefore, the satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) is not genuine. Keeping all these aspects, Mr. Mansuri submitted that the petition may be allowed and the order of detention may be quashed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Having regard to rival side contentions, it may be noted that the statements of anonymous witnesses have

been verified by the Dy.S.P., Jetpur. The detaining authority has not verified the statements. This emerges even from the grounds of detention served on the detenu. In paragraph 5 of the grounds of detention, the detaining authority observes that the statements have been verified by the Dy.S.P., Jetpur and, therefore, he (detaining authority) is fully satisfied that the activities of the detenu are detrimental to public order. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to taken into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186). It is, therefore, clear that the detaining authority has not undertaken any such exercise and no reliance can be placed on the statements of anonymous witnesses. Non-disclosure of identity of these witnesses has affected the right of the detenu of making an effective representation.

6. Apart from this, there is one more defect in the order. The detenu was in judicial custody when the order was passed. The detaining authority has so observed in paragraph 3. However, the grounds of detention do not indicate any compelling reasons for passing such an order. If an order is passed in absence of any such compelling circumstances while the detenu is in judicial custody, it vitiates the order for the reason that the urgent need for passing such an order is not substantiated by any supporting material. If there is nothing to indicate release or likelihood of release of

the detenu in near future, the urgency shown in the grounds of detention for passing such order is without basis and, therefore, not genuine. This would also vitiate the order of detention.

7. One more aspect that requires to be considered is that the representation made on behalf of the detenu was submitted to the jail authorities and the jail authorities, in turn, have sent it to the detaining authority also. The detaining authority acting upon that representation, supplied the documents demanded therein. It, however, appears that the detaining authority has not sent the representation to the Government along with its remarks expeditiously.

7.1 Order 19 (2) of the Order of 1985 runs as under:-

> "19.(1) .....
> (2) Where any detenu makes a representation under section 9 of the Act, the Superintendent shall forthwith forward it direct to the Government. Where the detaining authority is other than the Government, the Superintendent shall also forward a copy of the representation to such detaining authority and the detaining authority shall forward the same with its remarks, to the Government with the utmost expedition."

A plain reading of the above Order indicates that two situations are contemplated in event of representation being made under Section 9 of the PASA Act. Where the order is passed by the Government, the jail authority is expected to forward the representation to the Government forthwith. Where the detaining is other than the Government, the jail authority is expected to send copy of such representation to the detaining authority also (meaning thereby that it is sent to the Government as well as to the detaining authority). On receipt of such representation through the jail authority, the detaining authority has to forward the same to the Government along with remarks with utmost expedition. In the instant case, the detaining authority has received the representation and has supplied the documents demanded therein, but the authority has not forwarded the representation to the Government along with remarks at all, leave apart sending it with utmost expedition. The right of the detenu, therefore, of making an effective representation is infringed. This would render the continued detention bad in law.

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated December 20, 1999, passed against the detenu is hereby quashed. The detenu-Bhupendra alias Bhupat Panchabhai Aahir is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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